



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2001-11213, Notice No. 26]

Drug and Alcohol Testing: Determination of Minimum Random Testing Rates for 2022

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notification of determination.

SUMMARY: This notification of determination announces FRA's minimum annual random drug and minimum annual random alcohol testing rates for covered service and maintenance-of-way (MOW) employees for calendar year 2022.

DATES: This determination takes effect **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Gerald Powers, FRA Drug and Alcohol Program Manager, by email: gerald.powers@dot.gov or by telephone: 202-493-6313; or Sam Noe, FRA Drug and Alcohol Program Specialist, by email: sam.noe@dot.gov or by telephone: 615-719-2951.

SUPPLEMENTARY INFORMATION: FRA is announcing the 2022 minimum annual random drug and alcohol testing rates for covered service and MOW employees. For calendar year 2022, the minimum annual random testing rates for covered service employees will continue to be 25 percent for drugs and 10 percent for alcohol, while the minimum annual random testing rates for MOW employees will be lowered to 25 percent for drugs and will continue to be 10 percent for alcohol. Because these rates represent minimums, railroads and railroad contractors may conduct FRA random testing at higher rates.

Discussion

To set its minimum annual random testing rates for each year, FRA examines the last two complete calendar years of railroad industry drug and alcohol program data submitted to its Management Information System (MIS). FRA has also, however, reserved the right to consider factors other than MIS-reported data before deciding whether to lower annual minimum random testing rates. *See* 85 FR 81265 (Dec. 15, 2020).

Random Testing Rates for Covered Service Employees

The rail industry's random drug testing positive rate for covered service employees (employees subject to the Federal hours of service laws and regulations) remained below 1.0 percent for 2019 and 2020. The Deputy Administrator has therefore determined the minimum annual random drug testing rate for covered service employees will remain at 25 percent for the period January 1, 2022, through December 31, 2022. The industry-wide random alcohol testing violation rate for covered service employees remained below 0.5 percent for 2019 and 2020. Therefore, the Deputy Administrator has determined the minimum random alcohol testing rate for covered service employees will remain at 10 percent for the period January 1, 2022, through December 31, 2022.

Random Testing Rates for MOW Employees

MOW employees became subject to FRA random drug and alcohol testing in June 2017. *See* 81 FR 37894 (June 10, 2016). Although FRA had MIS data for two full, consecutive years of industry-wide performance rates for MOW employees when announcing the random testing rates for 2021, the Administrator found it was not in the interest of railroad safety to lower the random drug testing rate for MOW employees at that time. The Administrator did, however, lower the random alcohol testing rate for MOW employees to 10 percent. For an explanation of the Administrator's findings and determination, please refer to FRA's notification of determination for calendar year 2021. *See* 85 FR 81265-81267.

FRA now has MIS data for three full, consecutive years (2018-2020) for the industry-wide performance rates for MOW employees. The random drug testing violation rate for MOW employees has remained below 1.0 percent for the past two consecutive years, and has never been above 1.0 percent. The random drug testing violation rate for MOW employees also trended downwards in 2020, decreasing from 0.8 percent in 2019 to 0.59 percent in 2020, which is the lowest since FRA started collecting MIS data for MOW employees in 2017. Taking these factors into consideration, the Deputy Administrator has determined that the minimum annual drug testing rate for MOW employees will be lowered to 25 percent for the period January 1, 2022, through December 31, 2022. If the random drug testing violation rate for MOW employees increases to 1.0 percent or higher, FRA will raise the minimum annual drug testing rate back to 50 percent. *See* 49 CFR § 219.625(d)(2).

Because the random alcohol testing violation rate for MOW employees remained below 0.5 percent for 2019 and 2020, the Deputy Administrator has determined that the minimum annual random alcohol testing rate for MOW employees will continue to be 10 percent for the period January 1, 2022, through December 31, 2022.

Appendix

Figure 1. Random Drug Testing Violation Rates for Covered Service and MOW Employees

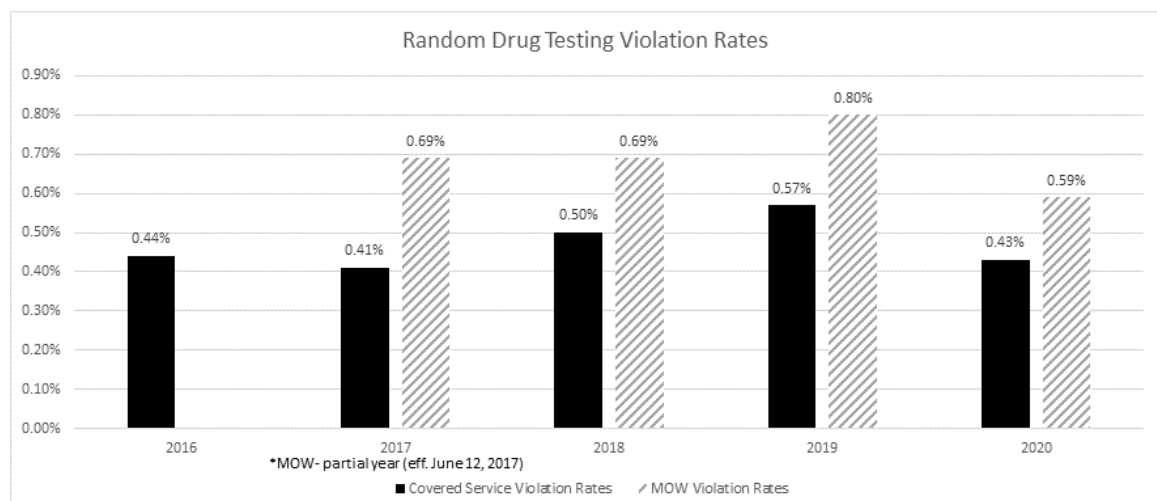
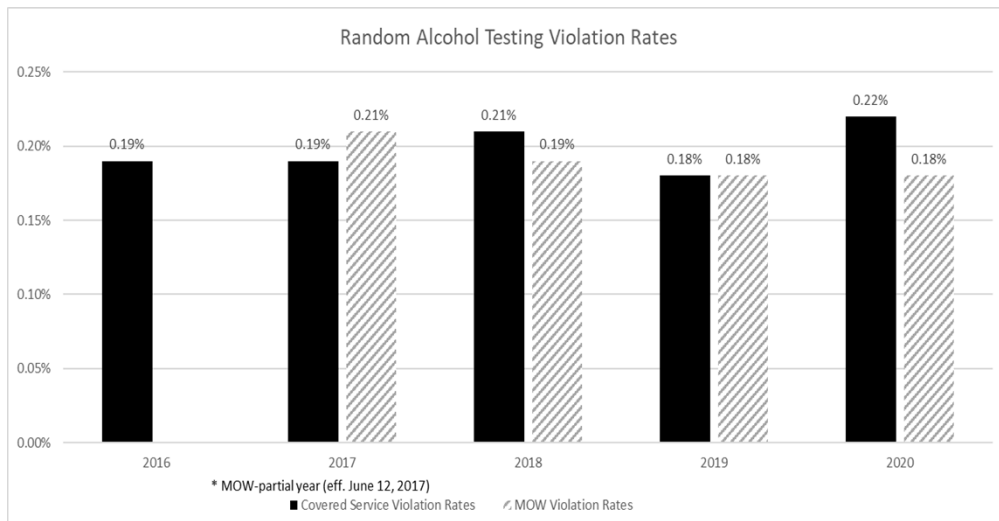


Figure 2. Random Alcohol Testing Violation Rates for Covered Service and MOW Employees



Issued in Washington, D.C.

Amitabha Bose,
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